



Paper No. 5

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OCT 20 2003

OFFICE OF PETITIONS

In re Application of
KOHL et al.
Application No. 09/915,211
Filed: July 25, 2001
Attorney Docket No. 9997.19USI1

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: DECISION ON PETITION
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This is a decision on the petition filed August 11, 2003, requesting that the above-identified application be accorded a filing date of July 25, 2001.

On July 25, 2001, applicants filed the above-identified application. However, on August 13, 2001, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application" requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on July 25, 2001, describes drawings containing Figures 1-11, but no drawings were filed on July 25, 2001. Additionally, the Notice required an executed oath or declaration, the \$710.00 statutory filing fee and \$522.00 claim fees.

On February 13, 2002, applicants submitted a request for a four-month extension of time with the fee of \$1,440.00. On January 13, 2003, the Office of Initial Patent Examination notified applicants of a continuity problem in application No. 10/269,673 due to the above-identified application's incomplete status. On August 11, 2003, applicants filed the present petition.

As stated in MPEP § 601.01(f), it is the practice of the United States Patent and Trademark Office (Office) to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" mailed August 13, 2001, was mailed in error and is hereby withdrawn.

The application is accorded a filing date of July 25, 2001, as requested in the petition.

However, the argument that drawings were filed on July 25, 2001, is not persuasive. The Office file is the official record of the papers originally filed in this application. A review of the official file reveals that no drawings were filed on July 25, 2001, because no such drawings are present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. Applicants failed to submit any evidence such as a date-stamped postcard receipt showing that applicants filed drawings on July 25, 2001.

The petition is granted to the extent that the application will be accorded the filing date of July 25, 2001, without any drawings.

Applicants have not submitted an executed oath or declaration and the \$130.00 surcharge for its late filing with the present petition. Applicants must submit these items within **TWO MONTHS** of the date of this decision. Extensions of time are available.

Office finance records indicate that applicants filed a four-month extension of time to reply to the Notice of Incomplete. Extensions of time were not available. Furthermore, finance records indicate that the present petition fee was submitted in application No. 10/269,673. The petition fee is unnecessary. Accordingly, the \$1,440.00 extension of time fee and the \$130.00 petition fee will be refunded to Deposit Account No. 13-2725. The \$710.00 basic filing fee and claim fees totaling \$522.00 will be charged to Deposit Account No. 13-2725, as authorized.

Applicants may request a corrected filing receipt in application No. 10/269,673 to add the continuity information. The application file is being returned to the Office of Initial Patent Examination for correction of the filing date to July 25, 2001, and an indication in the Office records that "0" sheets of drawings were present on filing.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

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